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CIRCUIT COURT
FEDERAL DISTRICT
LOS ANGELES
CALIF.

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IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

CV10 1363 ROWL (Ex)
Case No.:

CLASS ACTION COMPLAINT FOR
1) VIOLATION OF CALIFORNIA'S
UNFAIR COMPETITION LAW [CAL.
BUS. & PROF. CODE §§ 17200, *ET
SEQ.*];
2) VIOLATION OF CALIFORNIA'S
FALSE ADVERTISING LAW [CAL.
BUS. & PROF. CODE §§ 17500, *ET
SEQ.*];
3) VIOLATION OF CALIFORNIA'S
CONSUMERS LEGAL REMEDIES
ACT [CAL. CIVIL CODE §§ 1750, *ET
SEQ.*];
4) VIOLATION OF STATE UNFAIR
COMPETITION LAWS; AND
5) COMMON LAW UNJUST
ENRICHMENT

CLASS ACTION

DEMAND FOR JURY TRIAL

1 PLAINTIFF, on her own behalf and on behalf of the below-defined classes she
 2 respectively seeks to represent, upon personal knowledge as to herself and her own
 3 acts, and upon information and belief as to all other matters, alleges in support of this
 4 Class Action Complaint (“Complaint”) against defendant AT&T Mobility, LLC
 5 (“AT&T Mobility” or “Defendant”), as follows:

6 **I. NATURE OF THE ACTION**

7 1. Plaintiff brings this action individually and as the proposed
 8 representative of nationwide and California classes comprised of persons who (i)
 9 contracted with AT&T Mobility to purchase Internet access through either a cellular
 10 phone service plan offered by Defendant or through an AT&T Mobility datacard, and
 11 (ii) were charged a fee by AT&T Mobility that was represented on the bill to be a
 12 state or local tax on such Internet access. AT&T Mobility made this representation
 13 even though it knew that each such state imposed no tax on internet access because
 14 such a tax was preempted by federal legislation – entitled the Internet Tax Freedom
 15 Act, 47 U.S.C. § 151 note § 1100, *et seq.* (1998) and/or certain state statutes
 16 pertaining to such taxation.¹

17 2. AT&T Mobility’s systematic and unlawful misrepresentation that the fee
 18 it collects under the “tax” heading on its bills is, in fact, a required governmental tax
 19 has cost Plaintiff and the other members of the proposed class hundreds of millions of
 20 dollars.

21 3. AT&T Mobility also fraudulently conceals its conduct by not breaking
 22 out which portions of customers’ bills are being taxed and at what rate(s). AT&T
 23 Mobility provides only a single tax charge that covers the tax allegedly owed for all

25 ¹See, e.g., GA. CODE ANN. § 48-8-13 (2009); 35 ILL. COMP. STAT. 630/3 (2009);
 26 IOWA CODE § 423.2 (2010); KAN. STAT. ANN. § 79-3603(B) (2007); MO. REV.
 27 STAT. §§ 144.010 *et seq.* (2010); NEB. REV. STAT. § 77-2703.04 (2009); N.J. STAT.
 ANN. § 54:32B (West 2009); OHIO REV. CODE ANN. § 5739.02 (West 2009); OKLA.
 STAT. tit. 68, § 1354(A) (2009); TEX. TAX CODE ANN. § 151.0101 (2001) & §
 151.325 (2009).

1 parts of the bill, whether for voice service, messaging, or Internet-related data
2 services.

3 4. AT&T Mobility's unlawful assessment and collection of a fee falsely
4 represented to be a required government tax constitutes a violation of consumer fraud
5 and/or unfair and deceptive business practice acts under state law, and unjust
6 enrichment.

7 5. Other than the claim under California's Consumers Legal Remedies Act
8 (under which Plaintiff does not currently seek damages), Plaintiff seeks to recover for
9 herself and for the other members of the proposed class and/or subclasses (if
10 applicable) restitution and/or damages in the amount of the state and local sales tax
11 improperly charged by AT&T Mobility on sales of Internet access, punitive damages
12 and injunctive relief, together with costs, expenses and attorneys' fees incurred in this
13 action.

14 II. PARTIES

15 Plaintiff

16 6. Plaintiff, a resident of the State of California, is an individual consumer
17 who is a customer of AT&T Mobility. Plaintiff purchased from AT&T Mobility a
18 wireless data plan that permits access to the Internet via a wireless device. Plaintiff
19 seeks to represent and pursue claims on her own behalf, on behalf of a nationwide
20 class and on behalf of the California State Class (as defined below), under the
21 applicable laws pertaining to those claims.

22 Defendant

23 7. AT&T Mobility is a Delaware corporation in good standing and is
24 authorized to do business in California, as well as in all other states implicated in this
25 Complaint. AT&T Mobility maintains its principal place of business at 5565
26 Glenridge Connector, Glenridge Two, Atlanta, Georgia.

27 8. The true names and capacities of the Defendants sued herein as DOE
28 DEFENDANTS 1 through 10, inclusive, are currently unknown to Plaintiff, who

1 therefore sues such Defendants by fictitious names. Each of the Defendants
2 designated herein as a DOE is legally responsible for the unlawful acts alleged herein.
3 Plaintiff will seek leave of Court to amend her Complaint to reflect the true names
4 and capacities of the DOE Defendants when such identities become known.

5 III. JURISDICTION AND VENUE

6 9. This Court has personal jurisdiction over Defendant because Defendant
7 conducts business in the State of California including, but not limited to, the
8 marketing and sale of Internet access services via its cellular network in this District.
9 Additionally, AT&T Mobility has specifically sold and contracted cellular service
10 with internet access within this District to Plaintiff and regularly sends bills to
11 Plaintiff's address containing misrepresentations, and the payments made by Plaintiff
12 resulting from the conduct are initiated within this judicial District.

13 10. This Court has original jurisdiction pursuant to 28 U.S.C. § 1332(d)(2)
14 of the Class Action Fairness Act of 2005 ("CAFA"), because Plaintiff brings this
15 action as a class action under Rule 23 of the Federal Rules of Civil Procedure,
16 Plaintiff and certain members of the class are citizens of different states than
17 Defendant and the aggregate amount in controversy exceeds \$5 million, exclusive of
18 interest and costs.

19 11. Venue is proper in this Court pursuant to 28 U.S.C. § 1331, because
20 Defendant inhabits, transacts business in, resides in, is found in, or has an agent in
21 this District, and a substantial part of the events or omissions giving rise to the claim
22 occurred in this District.

23 IV. COMMON FACTUAL ALLEGATIONS

24 12. AT&T Mobility markets and sells several types of plans that provide
25 access to the Internet wirelessly over its cellular network through a cellular telephone
26 or a datacard built into or externally inserted into a computer. The datacard allows
27 the user to connect a computer to the Internet wirelessly via a radio device embedded
28 in the computer or through a device that connects to the computer via a PCMCIA

1 card or USB port. Datacards do not transmit voice or pictures independently of the
2 Internet. Consumers throughout the United States purchase wireless Internet access
3 from AT&T Mobility.

4 13. AT&T Mobility is the exclusive seller of cellular service for the wildly
5 popular and successful iPhone, and it has sold service for over 40 million iPhones
6 alone. Each iPhone comes with a data plan that includes internet access, and AT&T
7 Mobility has collected sales tax for the Internet access plan it has sold for each and
8 every iPhone.

9 14. When AT&T Mobility sells its wireless data plan to owners of smart
10 phones, including the iPhone, AT&T Mobility includes internet access within the line
11 item charge for a “data plan,” as reflected on Plaintiff’s monthly bills. Plaintiff and
12 the other members of the Class have purchased such data plans from AT&T Mobility.

13 15. AT&T Mobility states the charges for these Internet access plans as a
14 separate line item charge on the bills it sends to its customers, including Plaintiff and
15 the other members of the Class.

16 16. The Internet Tax Freedom Act, 47 U.S.C. § 151 note § 1100, *et seq.*
17 (1998), as amended, prohibits state and local governments from imposing taxes on
18 Internet access. “No State or political subdivision thereof shall impose any of the
19 following taxes during the period beginning November 1, 2003, and ending
20 November 1, 2014: . . . (1) Taxes on Internet access.”

21 17. Pursuant to the Internet Tax Freedom Act, the phrase “Internet access” is
22 defined as: “(A) . . . a service that enables users to connect to the Internet to access
23 content, information, or other services offered over the Internet; (B) includes the
24 purchase, use or sale of telecommunications by a provider of a service described in
25 subparagraph (A) to the extent such telecommunications are purchased, used or sold
26 – (i) to provide such service; or (ii) to otherwise enable users to access content,
27 information or other services offered over the Internet[.]” 47 U.S.C. § 151 note §
28 1105(5).

18. Notwithstanding this prohibition on taxation of Internet access under federal law – and/or the corresponding state law restrictions precluding such taxation – AT&T Mobility improperly and illegally charges its customers – including Plaintiff and each of the other members of the Class – state and local sales tax on Internet access on its monthly bills.

19. AT&T Mobility can reasonably identify its charges to Plaintiff and the other members of the Class for Internet access from the books and records it keeps in its regular course of business. AT&T Mobility knows how much of its data plans are utilized for Internet-related and non-Internet-related purposes, as those terms are defined under the Act. AT&T Mobility knows precisely how many minutes of Internet usage are associated with each of its customers' accounts, and AT&T Mobility knows the average ratio of Internet to non-Internet use averaged across the users of similarly bundled service packages.

20. With respect to its unlimited, flat-fee data plans, AT&T Mobility knows, or is able to identify from the books and records it keeps in its regular course of business, what part of that flat fee covers Internet charges and what part of that flat fee covers other charges (if any).

V. CLASS ACTION ALLEGATIONS

21. Plaintiff respectively brings this action against Defendant, pursuant to Rules 23(a), 23(b)(1), 23(b)(2), and 23(b)(3) of the Federal Rules of Civil Procedure, individually and on behalf of a nationwide class and a California class comprised of individuals or entities who, during the time period relevant to this action, entered into contracts with AT&T Mobility to obtain Internet access from AT&T Mobility through a smart phone or a wireless data card and who were charged tax by AT&T Mobility for that Internet access, on behalf of which Plaintiff respectively asserts claims against AT&T Mobility. Excluded from the Class are the Court and its employees; AT&T Mobility; any parent, subsidiary, or affiliate of AT&T Mobility; all AT&T Mobility current employees; and governmental entities.

1 22. The numerosity requirement of Fed. R. Civ. P. 23(a)(1) is satisfied
2 because the members of the Classes are so numerous (and, with respect to the
3 nationwide class, geographically dispersed) that joinder of all Class members is
4 impracticable. Plaintiff believes that there are millions of class members and, to the
5 extent the Court chooses to create subclasses by state, at least thousands of members
6 of each Class located throughout the respective states of each of those sub-classes.

7 23. The commonality requirement of Fed. R. Civ. P. 23(a)(2) is satisfied
8 because there are questions of law or fact common to the Classes, including but not
9 limited to:

- 10 a. Whether AT&T Mobility charged and collected from Plaintiff and the Class
11 sales tax on Internet access in violation of the Internet Tax Freedom Act, 47
12 U.S.C. § 151 note § 1100, *et seq.* (1998) (and the various state laws stated
13 above);
- 14 b. Whether AT&T Mobility's improper charging and collection of sales tax on
15 Internet access from Plaintiff and the other members of the class constitutes
16 a violation of state consumer protection laws and/or deceptive trade practice
17 acts, as applicable;
- 18 c. Whether AT&T Mobility was unjustly enriched by virtue of its wrongful
19 conduct, as alleged herein, under the applicable state laws;
- 20 d. Whether Plaintiff and the other members of the class are entitled to
21 compensatory, treble, and/or punitive damages; and
- 22 e. Whether Plaintiff and the other members of the class are entitled to
23 declaratory, injunctive, or other equitable relief.

24 24. The typicality requirement of Fed. R. Civ. P. 23(a)(3) is satisfied
25 because Plaintiff's claims are typical of the claims of all other members the class as
26 they have all sustained damages resulting from AT&T Mobility's charging of sales
27 tax for Internet access.

1 25. The adequacy requirement of Fed. R. Civ. P. 23(a)(4) is satisfied
2 because Plaintiff will fairly and adequately protect the interests of the members the
3 Class and has no interests that are antagonistic to or which conflict with those of the
4 other members of the Class.

5 26. Plaintiff is committed to the vigorous prosecution of this action and has
6 retained competent counsel experienced in litigation of this nature to represent herself
7 and the other members of the Class.

8 27. Absent a representative class action, members of the Class would
9 continue to suffer the harm described herein, for which they would have no remedy.
10 Even if separate actions could be brought by individual purchasers, the resulting
11 multiplicity of lawsuits would cause undue hardship and expense for both the Court
12 and the litigants, as well as create a risk of inconsistent rulings and adjudications that
13 might be dispositive of the interests of similarly situated purchasers, substantially
14 impeding their ability to protect their interests, while establishing incompatible
15 standards of conduct for AT&T Mobility. The proposed Class satisfies the
16 requirements of Fed. R. Civ. P. 23(b)(1). If necessary, Plaintiff proposes establishing
17 statewide subclasses to group similar state law claims.

18 28. AT&T Mobility has acted or refused to act on grounds generally
19 applicable to Plaintiff and the Class, thereby rendering class certification and
20 injunctive or declaratory relief appropriate. Certification under Fed. R. Civ. P.
21 23(b)(2) would, therefore, be appropriate.

22 29. As explained above, numerous common questions of fact and law exist.
23 These questions predominate over any individual questions presented in this action.
24 The predominance requirement of Fed. R. Civ. P. 23(b)(3) is thus satisfied.

25 30. A class action is the superior method for the fair and efficient
26 adjudication of this controversy. Because the damages suffered by individual
27 members may be relatively small, the expense and burden of litigation would prevent
28 the members of the Class from individually redressing the wrongs done to them.

Where, as here, the size and nature of Class members' claims would allow few, if any, members of the Class to seek legal redress against AT&T Mobility for the wrongs complained of herein, a representative class action is both the appropriate vehicle by which to adjudicate these claims and is essential to the interests of justice. Furthermore, a class action creates no significant problems of manageability. The superiority and manageability requirements of Fed. R. Civ. P. 23(b)(3) are thus satisfied.

31. Plaintiff proposes that notice of this class action be provided by individual mailings to class members and/or by publication in national and/or regional publications.

VI. PLAINTIFF'S CLAIMS FOR RELIEF

COUNT I

Violation of the California Unfair Competition Law

CAL. BUS. & PROF. CODE §§ 17200, *et seq.*

(Brought on behalf of the California State Class)

32. Plaintiff, for the purposes of the California State Class's claims, repeats and realleges Paragraphs 1-31 and Paragraphs 42-57, as though fully set forth herein.

33. Plaintiff brings this claim on behalf of herself and all other purchasers of AT&T Mobility's Internet data plans in the State of California.

34. California's Unfair Competition Law, Division 7, Part 2, Chapter 5 of the California Business & Professions Code (the "UCL"), prohibits unfair competition, which it defines as any unlawful, unfair, or fraudulent business act or practice; unfair, deceptive, untrue or misleading advertising; and any act prohibited by the False Advertising Law, CAL. BUS. & PROF. CODE §§ 17500, *et seq.*

35. AT&T Mobility in the course of its business, by its above-described conduct, engaged in one or more acts characterized as “unlawful, unfair, or fraudulent business act or practice,” pursuant to CAL. BUS. & PROF. CODE § 17200.

1 36. AT&T Mobility, by failing to inform Plaintiff and the other members of
2 the California State Class that it intended to charge them – and did charge them –
3 taxes not actually due and in collecting such taxes, employed an unlawful, unfair, or
4 fraudulent business act or practice to defraud, mislead, and deceive and/or suppress
5 material information regarding the characteristics of the transaction or the obligations
6 pertaining therein; and failed to inform Plaintiff and the other members of the
7 California State Class of a material fact in connection with the sale of goods or
8 services in violation of California law.

9 37. AT&T Mobility intended for Plaintiff and the other members of the
10 California State Class to rely on its aforementioned unlawful, unfair, or fraudulent
11 business acts and practices to the detriment of Plaintiff and the other members of the
12 California State Class, and Plaintiff did so rely. Such deceptive acts and practices
13 occurred in the course of conduct involving trade or commerce thereby violating
14 California law..

15 38. AT&T Mobility's violations of the California consumer protection laws
16 caused Plaintiff and the other members of the Class to sustain substantial and
17 ascertainable losses of money and/or property, in an amount to be determined at trial.

18 39. AT&T Mobility continues to charge and collect from Plaintiff and the
19 other members of the Class state and/or local taxes on its sale of Internet access to
20 them.

21 40. CAL. BUS. & PROF. CODE § 17203 permits the Court to enter
22 injunctive relief to prevent AT&T Mobility from continuing to violate the law by
23 charging and collecting state and local sales tax on its sales of Internet access to
24 Plaintiff and the other members of the California State Class, and to restore to
25 Plaintiff and all California State Class members all amounts owing to them.

26 41. On behalf of herself and all persons similarly situated, Plaintiff requests
27 injunctive relief, restitution, and disgorgement of appropriate monies for any
28 violations thereof.

COUNT II

Violation of the California False Advertising Law

CAL. BUS. & PROF. CODE §§ 17500, *et seq.*

(Brought on behalf of the California State Class)

42. Plaintiff, for the purposes of the California State Class's claims, repeats
and realleges Paragraphs 1-31, as though fully set forth herein.

7 43. Plaintiff brings this claim on behalf of herself and all other purchasers of
8 AT&T Mobility's Internet data plans in the State of California.

9 44. California's False Advertising Law, Division 7, Part 3, Chapter 1,
10 Article 1 of the California Business and Professions Code, makes it unlawful, in
11 connection with the sale of goods or services, to make or disseminate "any statement .
12 . . which is untrue or misleading, and which is known, or which by the exercise of
13 reasonable care should be known, to be untrue or misleading."

14 45. AT&T Mobility in the course of its business, by its above-described
15 conduct, engaged in one or more acts characterized as "untrue or misleading,"
16 pursuant to CAL. BUS. & PROF. CODE §§ 17500, *et seq.*

17 46. AT&T Mobility, by failing to inform Plaintiff and the other members of
18 the California State Class on its billing documents that it intended to charge them –
19 and did charge them – taxes not actually due and in collecting such taxes,
20 misrepresented, misled, and deceived and/or omitted or suppressed material
21 information regarding the truthfulness of the characteristics of the transaction or the
22 obligations pertaining therein.

23 47. AT&T Mobility used or employed the unlawful practices described
24 above with the intent that Plaintiff and the other members of the California State
25 Class would rely thereupon, and Plaintiff did so rely.

26 48. AT&T Mobility's violations of the California false advertising laws
27 caused Plaintiff and the other members of the California State Class to sustain

1 substantial and ascertainable losses of money and/or property, in an amount to be
 2 determined at trial.

3 49. On behalf of herself and all persons similarly situated, Plaintiff requests
 4 restitution, rescission, and injunctive relief.

5 **COUNT III**

6 **Violation of the California Consumers Legal Remedies Act,**

7 **CAL. CIVIL CODE §§ 1750, *et seq.***

8 **(Brought on behalf of the California State Class)**

9 50. Plaintiff, for the purposes of the California State Class's claims, repeats
 10 and realleges Paragraphs 1-31, as though fully set forth herein.

11 51. Plaintiff brings this claim on behalf of herself and all other purchasers of
 12 AT&T Mobility's Internet data plans in the State of California.

13 52. The California Consumers Legal Remedies Act, Division 3, Part 4, Title
 14 1.5, Chapter 1 of the California Civil Code (the "CLRA"), was enacted to protect
 15 consumers against unfair and deceptive business practices and to provide efficient
 16 and economical procedures to secure such protection. The CLRA is to be liberally
 17 construed and applied to promote those purposes.

18 53. AT&T Mobility in the course of its business, by its above-described
 19 conduct, engaged in one or more acts characterized as "unfair methods of competition
 20 and unfair or deceptive acts or practices," pursuant to CAL. CIVIL CODE § 1770,
 21 hereinafter set forth, *inter alia*:

- 22 a. CLRA § 1770(5): "Representing that goods or services have
 23 sponsorship, approval, characteristics, ingredients, uses, benefits, or
 24 quantities which they do not have . . .";
- 25 b. CLRA § 1770(14): "Representing that a transaction confers or
 26 involves rights, remedies, or obligations which it does not have or
 27 involve, or which are prohibited by law."

54. AT&T Mobility, by failing to inform Plaintiff and the other members of the California State Class that it intended to charge them – and did charge them – taxes not actually due and in collecting such taxes, misrepresented, misled, and deceived and/or omitted or suppressed material information regarding the characteristics of the transaction or the obligations pertaining therein; and failed to inform Plaintiff and the other members of the California State Class of a material fact in connection with the sale of goods or services in violation of California law.

55. AT&T Mobility used or employed the unfair or deceptive practices described above with the intent that Plaintiff and the other members of the California State Class would rely thereupon.

56. Plaintiff and the other members of the California State Class relied on AT&T Mobility's aforementioned deceptive acts and practices to the detriment of Plaintiff and the other members of the California State Class, and such deceptive acts and practices occurred in the course of conduct involving trade or commerce.

57. Plaintiff and the other members of the California State Class members seek an order enjoining AT&T Mobility's wrongful acts and practices. Plaintiff does not at present seek damages under this cause of action but intends to file an amended complaint in due course under Civil Code § 1782(d), also seeking damages, restitution, enhanced damages, and punitive damages under Civil Code §§ 1780(a)(1), (3) and (4) and 1780(b).

COUNT IV

Violation of State Unfair Competition Laws

58. Plaintiff repeats and realleges Paragraphs 1-31, as though fully set forth herein.

59. Plaintiff brings this claim on behalf of herself and all other purchasers of AT&T Mobility's Internet data plans in the United States

60. AT&T Mobility had a statutory duty to refrain from unfair or deceptive acts or practices in connection with its sale of Internet data plans in the United States

1 61. Had AT&T Mobility not engaged in the deceptive conduct described
2 above, Plaintiff would have acted differently.

3 62. AT&T Mobility's deceptive, unconscionable or fraudulent
4 representations and material omissions to consumers and the public, including
5 Plaintiff and the Class members, constituted unfair and deceptive acts and practices in
6 violation of the state consumer protection statutes listed below:

7 a. AT&T Mobility has engaged in unfair competition or unfair or
8 deceptive acts or practices in violation of Alaska Stat. §§ 45.50.471, *et seq.*;

9 b. AT&T Mobility has engaged in unfair competition or unfair or
10 deceptive acts or practices in violation of Ariz. Rev. Stat. §§ 44-1522, *et seq.*;

11 c. AT&T Mobility has engaged in unfair competition or unfair or
12 deceptive acts or practices in violation of Ark. Code §§ 4-88-101, *et seq.*;

13 d. AT&T Mobility has engaged in unfair competition or unfair or
14 deceptive acts or practices in violation of Colo. Rev. Stat. §§ 6-1-105, *et seq.*;

15 e. AT&T Mobility has engaged in unfair competition or unfair or
16 deceptive acts or practices in violation of Conn. Gen. Stat. §§ 2-1 10a, *et seq.*;

17 f. AT&T Mobility has engaged in unfair competition or unfair or
18 deceptive acts or practices in violation of Del. Code §§ 2511, *et seq.* and 2531, *et seq.*;

19 g. AT&T Mobility has engaged in unfair competition or unfair or
20 deceptive acts or practices in violation of D.C. Code §§ 28-3901, *et seq.*;

21 h. AT&T Mobility has engaged in unfair competition or unfair or
22 deceptive acts or practices in violation of Fla. Stat. §§ 501.201, *et seq.*;

23 i. AT&T Mobility has engaged in unfair competition or unfair or
24 deceptive acts or practices in violation of Haw. Rev. Stat. §§ 480-1, *et seq.*;

25 j. AT&T Mobility has engaged in unfair competition or unfair or
26 deceptive acts or practices in violation of Idaho Code §§ 48-601, *et seq.*;

27 k. AT&T Mobility has engaged in unfair competition or unfair or
28 deceptive acts or practices in violation of 815 ILCS §§ 505/1, *et seq.*;

1 1. AT&T Mobility has engaged in unfair competition or unfair or
2 deceptive acts or practices in violation of Kan. Stat. §50-623, *et seq.*;

3 m. AT&T Mobility has engaged in unfair competition or unfair or
4 deceptive acts or practices in violation of Ky. Rev. Stat. §§ 367.170, *et seq.*;

5 n. AT&T Mobility has engaged in unfair competition or unfair or
6 deceptive acts or practices in violation of La. Rev. Stat. §§ 51:1401, *et seq.*;

7 o. AT&T Mobility has engaged in unfair competition or unfair or
8 deceptive acts or practices in violation of Md. Com. Law Code §§ 13-101, *et seq.*;

9 p. AT&T Mobility has engaged in unfair competition or unfair or
10 deceptive acts or practices in violation of Mich. Comp. Laws Ann. §§ 445.901, *et seq.*;

11 q. AT&T Mobility has engaged in unfair competition or unfair or
12 deceptive acts or practices in violation of Minn. Stat. §§ 325D.43, *et seq.*; 325 F.67, *et*
13 *seq.*; and 325F.68, *et seq.*;

14 r. AT&T Mobility has engaged in unfair competition or unfair or
15 deceptive acts or practices in violation of Vernon's Ann. Missouri Stat. §§ 407.010, *et*
16 *seq.*;

17 s. AT&T Mobility has engaged in unfair competition or unfair or
18 deceptive acts or practices in violation of Neb. Rev. Stat. §§ 59-1601, *et seq.*;

19 t. AT&T Mobility has engaged in unfair competition or unfair or
20 deceptive acts or practices in violation of Nev. Rev. Stat. Ann. §§ 598.0903, *et seq.*;

21 u. AT&T Mobility has engaged in unfair competition or unfair or
22 deceptive acts or practices in violation of N.H. Rev. Stat. §§ 358-A:1, *et seq.*;

23 v. AT&T Mobility has engaged in unfair competition or unfair or
24 deceptive acts or practices in violation of N.J. Rev. Stat. §§ 56:8-1, *et seq.*;

25 w. AT&T Mobility has engaged in unfair competition or unfair or
26 deceptive acts or practices in violation of N.M. Stat. §§ 57-12-1, *et seq.*;

1 x. AT&T Mobility has engaged in unfair competition or unfair or
2 deceptive acts or practices in violation of N.Y. Gen. Bus. Law §§ 349, *et seq.* and 350-e,
3 *et seq.*;

4 y. AT&T Mobility has engaged in unfair competition or unfair or
5 deceptive acts or practices in violation of N.C. Gen. Stat. §§ 75-1.1, *et seq.*;

6 z. AT&T Mobility has engaged in unfair competition or unfair or
7 deceptive acts or practices in violation of N.D. Cent. Code §§ 51-12-01, *et seq.*, and 51-
8 15-01, *et seq.*;

9 aa. AT&T Mobility has engaged in unfair competition or unfair or
10 deceptive acts or practices in violation of Okla. Stat. §§ 15 751, *et seq.*;

11 bb. AT&T Mobility has engaged in unfair competition or unfair or
12 deceptive acts or practices in violation of Or. Rev. Stat. §§ 6464.605, *et seq.*;

13 cc. AT&T Mobility has engaged in unfair competition or unfair or
14 deceptive acts or practices in violation of 73 Pa. Stat. §§ 201-1, *et seq.*;

15 dd. AT&T Mobility has engaged in unfair competition or unfair or
16 deceptive acts or practices in violation of R.I. Gen. Laws. §§ 6-13.1-1, *et seq.*;

17 ee. AT&T Mobility has engaged in unfair competition or unfair or
18 deceptive acts or practices in violation of S.C. Code Laws §§ 39-5-10, *et seq.*;

19 ff. AT&T Mobility has engaged in unfair competition or unfair or
20 deceptive acts or practices in violation of S.D. Codified Laws §§ 37-24-1, *et seq.*;

21 gg. AT&T Mobility has engaged in unfair competition or unfair or
22 deceptive acts or practices in violation of 9 Vt. §§ 2451, *et seq.*;

23 hh. AT&T Mobility has engaged in unfair competition or unfair or
24 deceptive acts or practices in violation of Va. Code §§ 59.1-196, *et seq.*;

25 ii. AT&T Mobility has engaged in unfair competition or unfair or
26 deceptive acts or practices in violation of Wash. Rev. Code. §§ 19.86.0 10, *et seq.*; and

27 jj. AT&T Mobility has engaged in unfair competition or unfair or
28 deceptive acts or practices in violation of Wis. Stat. §§ 100.20, *et seq.*.

63. Plaintiff and members of the Class relied upon AT&T Mobility's misrepresentations and/or omissions to their detriment.

64. Plaintiff will provide any required notice to appropriate entities regarding AT&T Mobility's unfair and deceptive trade practices.²

65. As a direct and proximate result of AT&T Mobility's wrongful conduct, Plaintiff and the Class members have been damaged.

66. As a direct and proximate result of AT&T Mobility's wrongful conduct, Plaintiff and the Class are entitled to compensatory damages, treble or other statutory damages, attorneys' fees and cost of this suit.

COUNT V

Common Law Unjust Enrichment

67. Plaintiff repeats and realleges Paragraphs 1-31, as though fully set forth herein.

68. Plaintiff brings this claim on behalf of herself and all other purchasers of AT&T Mobility's Internet data plans in the United States.

69. To the extent that AT&T Mobility retains any amount of the state and local sales tax it collects on its sale of Internet access to Plaintiff and the other members of the Class, AT&T Mobility has received a measurable benefit from Plaintiff and the other members of the Class during the relevant time period.

70. To the extent AT&T Mobility retains such amounts, AT&T Mobility has knowingly appreciated and accepted this benefit, which has resulted and is continuing and/or may continue to result in an inequity to Plaintiff and the other members of the Class.

² After satisfaction of the notice requirements of the following States, Plaintiff will seek permission to add claims, under Count IV, for violation of the consumer protection laws of the following States: Indiana, Maine, Massachusetts, Texas, West Virginia and Wyoming.

71. AT&T Mobility's appreciation and acceptance of any such benefit is inequitable. It would be unjust for AT&T Mobility to retain the above-described benefit.

72. As a result of any unjust enrichment by AT&T Mobility, Plaintiff and the other members of the Class sustained damages in an amount to be determined at trial and seek full disgorgement and restitution of AT&T Mobility's enrichment, benefits, and ill-gotten gains acquired as a result of the unlawful or wrongful conduct alleged above.

VII. REQUEST FOR RELIEF

WHEREFORE, Plaintiff, on behalf of herself and respectively on behalf of the Class she seeks to represent, respectfully requests the following relief:

- (a) that the Court determine that this action may be maintained as a class action and certify Plaintiff to serve as a class representative;
- (b) that AT&T Mobility's wrongful conduct alleged herein be adjudged and decreed to violate the consumer protection, deceptive trade practice, and other statutory claims asserted, and the common law of unjust enrichment;
- (c) that Plaintiff and each of the other members of the Class be awarded restitution, damages and, where applicable, treble, multiple, disgorgement, or other damages – with interest – according to the laws of each of the states applicable to Class members;
- (d) that Plaintiff and each of the other members of the Class recover the amounts by which AT&T Mobility has been unjustly enriched;
- (e) that AT&T Mobility be enjoined from continuing the wrongful conduct alleged herein and required to comply with all applicable laws;
- (f) that Plaintiff and each of the other members of the Class recover their costs of suit, including reasonable attorneys' fees and expenses as provided by law; and

1 (g) that Plaintiff and each of the other members of the Class be granted such
2 other and further relief as the nature of the case may require or as this Court
3 deems just and proper.

4

5 Dated: February 23, 2010

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7 Respectfully submitted,

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DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury as to all claims so triable.

Dated: February 23, 2010

Respectfully submitted,


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